IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 21523 of 2001(K)

PETITIONER:

M/S. SONIC ELECTROCHEM (P) LTD., 38, PATEL NAGAR, INDORE 452 001
REPRESENTED BY ITS DIRECTOR, SHAILESH SHAH

BY ADV. SRI.K.I.MAYANKUTTY MATHER

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER (ASSESSMENT),
   SPECIAL CIRCLE II, ERNAKULAM.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

3. THE COMMISSIONER, COMMERCIAL TAXES, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 35000 OF 2001 IN OP 21523 OF 2001

DISMISSED

16.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ANNUAL RETURN DATED 28.4.1992 FOR THE YEAR 1991-92

EXT.P2 TRUE COPY OF THE ANNUAL RETURN DATED 15.11.1993 FOR THE YEAR 1992-93

EXT.P3 TRUE COPY OF THE ANNUAL RETURN DATED 25.11.1994 FOR THE YEAR 1993-94

EXT.P4 TRUE COPY OF THE NOTICE DATED 15.6.1994 ISSUED UNDER SECTION 45A(1)(d) OF THE KGST ACT BY THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF THE NOTICE UNDER SECTION 45A(1)(d) OF THE KGST ACT DATED 8.12.1994 ISSUED BY THE FIRST RESPONDENT.

EXT.P6 TRUE COPY OF THE REPLY DATED 29.6.1994 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P7 TRUE COPY OF THE REPLY DATED 22.12.1994 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P8 TRUE COPY OF THE ORDER DATED 16.11.1994 OF THE FIRST RESPONDENT.

EXT.P9 TRUE COPY OF THE ORDER DATED 28.12.1994 OF THE FIRST RESPONDENT.

EXT.P10 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT IN STRP 145 OF 1994 DATED 4.2.95

EXT.P11 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT IN STRP 19/95 DATED 10.6.98

EXT.P12 TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT NO. R1-12052/95/TX 9STRP 514/95) DATED 17.2.1999

EXT.P13 TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT IN STRP 98/98 DATED 16.6.2000

EXT.P14 TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF PENALTY AMOUNT DATED NIL

EXT.P15 TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF PENALTY AMOUNT DATED 20.3.99

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 21523 OF 2001

Dated this the 16th day of March, 2007

JUDGMENT

Petitioner is challenging Exts. P12 and P13 orders of the Commissioner of Commercial Taxes whereunder the Commissioner has confirmed first revisional orders on penalty for assessment years 1992-93 and 1993-94. The dispute pertains to rate of tax on mats used as mosquito repellent. According to the petitioner, the mat used for repelling mosquito is an insecticide which attracts tax at 2.5 per cent. However, the assessing officer found that mosquito repellants are covered by separate entry taxable at 7 per cent and therefore penalty was levied for conscious evasion of tax. In the first year, the Deputy Commissioner in revision reduced the penalty from Rs. 58,143/- to Rs. 10,000/-. However, in the second year, the Deputy Commissioner did not grant any relief in quantum but confirmed the penalty levied by the Officer.

2. Counsel for the petitioner contended that the issue on rate of tax is finally settled in favour of the State vide decision of this Court in TRANSELEKTRA DOMESTIC PRODUCTS PVT. LTD. V.

STATE OF KERALA, (2000) 8 KTR 556 (Ker.), and soon after assessment taxes were paid. Government Pleader on the other hand submitted that there is no bona fide in the dispute raised by the petitioner in as much as the item sold is squarely covered by Entry 85 of the First Schedule to the KGST Act which covers mosquito repellents of all types.

3. The question to be considered is whether the dispute on rate of tax raised by the petitioner is bona fide or not or whether it is only a ruse to delay payment of tax. In this case, I am unable to accept petitioner's contention that petitioner was under bona fide impression that the item is not covered by Entry 85, because the said Entry covers mosquito repellents of all types including electrically operated system. Mats sold by the petitioner are exclusively used as repellent or destroyer of mosquito only and it has no general use as an insecticide. Therefore the claim of bona fide dispute and consequent filing of wrong return is unacceptable. Therefore the levy of penalty in principle is only to be upheld and I do so. So far as quantum of penalty is concerned, no modification is called for, for the year 1992-93 as the

Deputy Commissioner has granted substantial reduction. Since reduction is granted for the first year, and since tax was paid by the petitioner without any further delay, reduction is called for, for the subsequent year also.

In the circumstances, O.P. is disposed of confirming penalty for 1992-93 but reducing the penalty for 1993-94 by one-third. In other words, two-thirds penalty levied for 1993-94 will stand confirmed.

(C.N.RAMACHANDRAN NAIR)
Judge